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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91163810
Party	Defendant Mormar, Mark J. Mormar, Mark J. 167 Route 301 Cold Spring, NY 10516
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No.: 78/119979

For the mark: 13

Published in the Official Gazette on: November 16, 2004

Reebok International Ltd.,)
)
Opposer)
v.)
)
Mark J. Mormar)
)
Applicant)

Opposition No. 91163810

ANSWER TO NOTICE OF OPPOSITION

Applicant Mark J. Mormar ("Applicant") hereby answers the Notice of Opposition filed by Reebok International Ltd., ("Opposor"), as follows:

1. Applicant lacks sufficient information to form a belief as to the truth of Opposer's allegations that it "is a leading manufacturer and marketer in this country of footwear and apparel products, including, without limitation, footwear and apparel goods having the commercial endorsements of selected professional basketball players and athletes," and on this basis denies same.
2. Applicant admits that he is aware of a basketball player by the name of Allen Iverson, and that he plays for the National Basketball Association, and that Mr. Iverson currently wear s a jersey that possesses the number 3 on its back.
3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 3 of the Notice of Opposition and therefore denies those allegations.
4. Applicant is without knowledge or information sufficient to form a belief as to the

truth of the allegations of Paragraph 4 of the Notice of Opposition and therefore denies those allegations.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 5 of the Notice of Opposition and therefore denies those allegations.
6. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 6 of the Notice of Opposition and therefore denies those allegations.
7. Applicant denies the allegations of Paragraph 7 of the Notice of Opposition.
8. Applicant admits that he is aware of Opposer's U.S. Trademark No. 2512630.
9. Applicant admits that through Trademark Application Serial No. 78/119979, Applicant seeks to register the designation of number "13" in International Class 25 as a trademark, for use in conjunction with the goods stated within said application.
10. Applicant denies the factual allegations in Paragraph 10 of the Notice of Opposition. The remaining allegations consist of legal conclusions or contentions to which no response is required.

In particular, Opposer has alleged that "visually, Applicant's "13" mark is almost identical to Reebok's senior "I3" mark". Applicant denies these allegations, which consist of legal conclusions or contentions to which no response is required, and therefore are not governed by 15 U.S.C. §1052(d).

11. Applicant admits that in the course of applying for registration of the subject mark, Applicant represented under oath that the designation "13" has been used by applicant in commerce as a trademark with respect to at least several types of goods listed in said application.

In the course of applying for registration of subject mark, Applicant was guided by Trademark Manual of Examination Procedures (TMEP) - 3rd Edition:

903.09 More than One Item of Goods or Services

If more than one item of goods or services is specified in a particular class, the date of first use anywhere and date of first use in commerce do not have to pertain to every item in the class. It might be that the mark, although in use on all of the items at the time the application or allegation of use was filed, was first used on various items on differing dates, so that it would be cumbersome to designate the dates for all items individually. See Sunshine Biscuits, Inc. v. Berke Bakeries, Inc., 106 USPQ 222 (PO Ex. Ch. 1955); Ex parte Wayne Pump

Co., 88 USPQ 437 (PO Ex. Ch. 1951).

Therefore, Applicant was not required by statute to specify dates of first use anywhere or date of first use in commerce for every item Application Serial No. 78/119979 seeks to register.

12. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.
13. Applicant denies the allegations of Paragraph 12 of the Notice of Opposition.
14. Applicant admits that the PTO accepted Applicant's representations, and having applied all Examiner guidelines as stipulated and required by the Trademark Manual of Examination Procedures (TMEP), approved said application for publication. Applicant's application was therefore Published for Opposition on November 16, 2004.
15. Applicant denies the factual allegations in Paragraph 15 of the Notice of Opposition. The remaining allegations consist of legal conclusions or contentions to which no response is required.
16. Applicant denies the allegations of Paragraph 16 of the Notice of Opposition.
17. Applicant denies the factual allegations in Paragraph 17 of the Notice of Opposition. The remaining allegations consist of legal conclusions or contentions to which no response is required.
18. Applicant denies the allegations of Paragraph 18 of the Notice of Opposition.
19. Applicant denies the allegations of Paragraph 19 of the Notice of Opposition.
20. Applicant denies the allegations of Paragraph 20 of the Notice of Opposition.

AFFIRMATIVE DEFENSES

1. Opposer has failed to state a claim upon which relief may be granted.
2. There is no likelihood of confusion between Applicant's mark as used in connection with Applicant's goods and services, and Opposer's mark as used in connection with Opposer's goods and services.
3. Applicant's and Opposer's respective marks are not sufficiently similar for a

likelihood of confusion.

4. On information and belief, consumers are able to distinguish between the registration of Applicant's mark, the number "13", and Opposer's mark which consists of an alphabetical letter "T" and the number "3".
5. Applicant is also owner of a federal registration of its "13" trademark in International Class 12, U.S. Trademark Registration No. 2840442.
6. Applicant is also owner of a federal registration of its "13" trademark in International Class 14, U.S. Trademark Registration No. 2840442.
7. Applicant is also owner of a federal registration of its "13" trademark in International Class 35, U.S. Trademark Registration No. 2810440.

WHEREFORE, Applicant prays and requests that the Board dismiss the Notice of Opposition filed in this proceeding, and that its registration be issued forthwith.

Respectfully Submitted,

Dated: February 23, 2005

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